State of Rajasthan & Ors. vs. Snehmal Kothari & Anr.

SB Civil Regular 1st Appeal No.03/1988

Date of Judgment: 24th April, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.N.Moolchandani , Dy.G.A. for the State.
Mr.Jitendra Chopra for the respondent/s.

Heard learned counsel for the parties.

This first appeal is filed against the impugned judgment and decree dated 21.09.87 passed by the learned District Judge, Balotra, passed in Civil Suit No.05/1985 whereby the suit filed by the respondent-plaintiff was decreed for recovery of rent arrears of Rs.10,782/-.

The learned counsel for the appellant has submitted that in respect of the same premises, earlier suit was filed by the respondent-plaintiff for recovery of the suit being No.31/1982 which was decreed on 19.04.85 against which appellant State filed appeal being first appeal No.82/1985. But the learned trial court , without

appreciating the objections of the appellant-defendant, decreed the suit of the respondent-plaintiff for the same relief, which was otherwise not maintainable.

The learned counsel for the appellant was asked to convince that how the subject matter of both the civil suit and the later suit was barred by the principle of law. But the learned counsel for the appellant could not make out the resemblance of both the litigation in either way, rather the counsel for the respondent-plaintiff, has brought out the complete facts of the case before this court and has urged that the former civil suit was with regard to arrears of rent for different period and the later suit was filed for different period.

Significantly, it has been also brought to the notice of this Court that the civil first appeal referred by the appellant being No.82/1985 has already been dismissed by this Court and the learned counsel for the appellant is not in a position to rebut the arguments of the respondents.

Since the first appeal filed by the appellant No.82/1985, has already been dismissed, hence the arguments of the learned counsel for the appellant does not hold any ground.

I have considered the arguments of both the parties and have gone though the record of the case.

It is undisputed fact that the suit premises was given on rent to the Animal Husbandry Department , Rajasthan, in the premises owned by the respondent-plaintiff.

It is argued by the respondent-plaintiff that earlier the rent of the premises was Rs.282.50/- p.m. But later due to flood, some portion of the suit premises got damaged, hence it was prayed by the appellant to raise new construction and also sought extended premises, for which the rent was enhanced, with the consent of the appellant. The appellant-defendant did not tender rent to him for the period after the assessment of the building was carried out by the Public Works Department, and the new rent was fixed at the rate of Rs.1220.69/- per month on 24.12.81. Thus, as per this agreed rent the appellant-defendant claimed that they would pay the rent from this date, i.e. 24.12.81 and not from the date when the extended premises was taken on rent. So the dispute in this matter is with regard to enhanced rate of rent for the period from 01.04.81 to 31.12.81 which is the difference of the rent from the old rate to the new rate.

After careful consideration of the material available record and so also the evidence led by the parties, I am of the view that from the assessment report of the PWD, it does not transpire that this enhanced rate of interest is to be applicable from the date of assessment, whereas it is not disputed by the appellant that the extended suit premises was taken by them on rent on 01.04.81 and the new enhanced rate of interest was assessed by the PWD for this extended suit premises and not for the premises, which was earlier on rent to the appellant department. Thus, I do not find any substance in the arguments of the learned counsel for the appellant.

In view of the above, I do not find any error in the judgment and decree passed by the learned trial court. The respondent-plaintiff has succeeded in establishing his rights for arrears of rent claimed, which has been rightly awarded by the learned trial court.

In that view of the matter, this appeal filed by the appellant lacks merits, as such I do not incline to interfere in the judgment and decree passed by the learned trial court. Consequently,

the appeal filed by the appellant is dismissed, however, with no costs.

(BHAGWATI PRASAD), J.

L.George